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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,559	03/01/2002	Richard P. Lamothe	4341-32-1	2177

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EXAMINER	
PETERSON, KENNETH E	
ART UNIT	**PAPER NUMBER**
3724	

DATE MAILED: 01/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Acti n Summary	Application No.	Applicant(s)	
	10/087,559	LAMOTHE, RICHARD P.	
	Examiner	Art Unit	
	Kenneth E Peterson	3724	

-- The MAILING DATE of this communication appears on the cover sh et with the correspondence address --

Period f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 December 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *24-26 and 29-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *24-26 and 29-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 24-26 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilat et al.'801, who shows a ribbon slitter/merger with most of the recited limitations including a slitter (20), a turnbar roller (64), and two vertically spaced take-up rollers (at 80 and near 58 in figure 5), one of which is adjustable (80).

Gilat also shows a drive mechanism having a master and slave roller (right side of figure 1) that pull the web thru. Gilat is silent on the speed of these rollers, but one of ordinary skill would understand this silence to mean that they are driven at the same speed as the web. To be sure, Examiner takes Official Notice that such is well known.

It is noted that Applicant's take-up rollers are positioned above the device, whereas Gilat's are below the device. However, the courts have long held that such a reversal of parts is obvious. It would have been obvious to one of ordinary skill in the art to have placed Gilat's take-up rollers above the device instead of below the device, as is obvious (see In re Japikse, 86 USPQ 70), since the operation of the device would not thereby be modified.

All of the claims require a transverse cutter, and Gilat does indeed suggest that his labels need to be separated (line 3, column 3), but Gilat does not show his cutter. Examiner takes Official Notice that it is well known to transversely cut labels coming out of a printer, as in Gilat. An example of such is the patent to Ottavan '770. It would have

been obvious to one of ordinary skill in the art to have provided a transverse cutter in Gilat, as suggested by Gilat himself and as is well known and taught by Ottavan, in order to separate the labels into usable sections.

In regards to claim 26, Gilat lacks a third ribbon. Examiner takes Official Notice that it is well known for a slitter/merger to slit and merge three ribbons. An example of such is the patent to Bahrani '884 (paragraph spanning columns 6 and 7). It would have been obvious to one of ordinary skill in the art to have modified Gilat by making his slitter/merger have three ribbons, as is well known and taught by Bahrani, in order to make three layer labels. Of course, Examiner takes Official Notice that three layer labels are well known. An example of a three layer label is the patent to MacGregor et al.'504 (line 13, column 2). In regards to the rollers being different sizes, Examiner notes that Gilat himself shows roller size to be an arbitrary design choice, as seen in figure 4, where four different sizes of roller are shown, all performing roughly the same function. The courts have long held that changing the size of a part is not ordinarily a matter of invention (see In re Rose, 10 USPQ 237). It would have been obvious to one of ordinary skill in the art to have modified Gilat by making his additional turnbar have a different diameter than his original turnbar, since Gilat himself teaches that having rollers of various sizes is an art-recognized equivalent to having the rollers be the same size (see MPEP 2144.06).

3. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant has overcome the new matter rejection, the Katz rejection and the drawing objection.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ken Peterson at 517-272-4512, on Monday-Thursday, 7AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap, can be reached at 571-272-4514. In lieu of mailing, it is encouraged that papers be faxed to 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. For more information about the PAIR system, see http://pair-direct.uspto.gov or call the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kp

January 12, 2005

KENNETH E. PETERSON
PRIMARY EXAMINER